



## **SMALL BUSINESS ECONOMIC IMPACT STATEMENT FOR PROPOSED RULES TO CHAPTER 16-232 WAC**

### **SUMMARY OF PROPOSED RULES**

The Washington State Department of Agriculture Pesticide Management Division is proposing to amend chapter 16-232 WAC in order to restrict the use of two insecticides in the Grayland cranberry growing area to prevent water contamination.

The Grayland Cranberry growers instituted the Best Management Practices (BMPs) contained in this Rule Proposal, voluntarily over the last 15 years. Most growers, 85% or more, have already completed the work necessary to comply with this rule. This rule only intends to require the BMPs to all growers, thus creating a fair playing field and preventing further contamination of waterways in Grayland. Continued or greater contamination of waterways in Grayland with these or other pesticides could result in a much greater cost to this industry and their growers through clean up costs and more aggressive restrictions on pesticide use in this area. Further restrictions on this industry could end cranberry growing in this area. The intent of these BMPs is to prevent the further contamination and prevent further more expensive restrictions to growers and the cranberry industry.

The proposed amendments to this chapter include:

- Restricting the use of chlorpyrifos and diazinon when applied to cranberries in Grayland.
- Requiring cribbing and covering of ditches adjacent to cranberry beds in the Grayland area.
- Requiring protection of source water when chemigating cranberry beds with chlorpyrifos and diazinon.

### **SMALL BUSINESS ECONOMIC IMPACT STATEMENT**

Chapter 19.85 RCW, the Regulatory Fairness Act, requires an analysis of the economic impact proposed rules will have on regulated businesses. Preparation of a Small Business Economic Impact Statement is required when proposed rules will impose more than minor costs on businesses.

"Minor cost" means a cost that is less than 1% of annual payroll or the greater of either 0.3% of annual revenue or \$100.

"Small business" means any business entity that is owned and operated independently from all other businesses and has 50 or fewer employees.

### **INDUSTRY ANALYSIS**

The proposed rule impacts cranberry growers in Grayland, WA. WSDA has analyzed the proposed rule amendments and has determined that costs are more than minor on regulated businesses.

## INVOLVEMENT OF SMALL BUSINESSES

This rule has been a cooperative effort from the beginning. The industry requested this rule to get all growers on board with protecting the waterways in Grayland from pesticide impacts. The Department has been working and meeting with the Grayland Grower Cranberry Board on this Rule since 2009. Small businesses have been involved in writing the proposed rules and in providing the Department with the expected costs associated with the changes. The growers requested this rule to require all growers to comply with NRCS standards already being instituted by most growers. The need for all growers in the area to crib and cover their ditches is essential to clean up their waterways. Two ditches in Grayland are currently listed for the contaminants Diazinon and Chlorpyrifos on Department of Ecology's (DOE) 303(d) list. The Grayland cranberry growers chemigate (apply pesticides through their chemigation systems). The goal of this rule is to clean up these waterways and prevent further contamination by chlorpyrifos and diazinon.

We met with the Grayland Grower Cranberry board approximately once per quarter until a draft rule was formulated. In the summer of 2010 we mailed a survey to all Grayland Growers to ask about the costs to their industry and individual growers. We had a good response – approximately 50 % of Grayland Growers returned the completed survey. We also have a 2005 cost analysis of cribbing and covering from WSU at the request of their industry that was done with the expectation of rulemaking to follow.

We then had to postpone rulemaking efforts due to the Governor's Executive Order 10-06 moratorium on rulemaking. However, at the beginning of 2012 we received an exception to this Executive Order to proceed with the rule making to help protect the water in the Grayland area. Since January 2012, we have met with the board almost monthly to finalize the draft rule.

## COST OF COMPLIANCE

RCW 19.85.040 directs agencies to analyze the costs of compliance for businesses required to comply with the proposed rule. Growers will have three choices after this rule is implemented and each choice involves different costs:

1) Growers can install cribbing and covering over ditches/drains adjacent to their cranberry beds to protect the ditch.

- Survey results for estimated costs varied widely from growers who have yet to crib and cover their ditches and drains, from a low of \$1.87 per lineal foot to \$14.00 per lineal foot. The average cost, according to survey results, is \$9.70 per lineal foot. This covers the cost of labor and materials.
- The 2005 WSU Cost Analysis found costs of cribbing and covering without cost sharing to be approximately \$12.18 per lineal foot or \$14,610 per 1200 feet of ditch, the average length of ditch in the Grayland area. Cost sharing for growers from USDA's NRCS (United States Department of Agriculture Natural Resource and Conservation Service) program will continue to be available to growers after this rule takes effect. The NRCS cost sharing program will greatly help reduce the economic impact to growers. The 2005 WSU Cost Analysis showed costs with cost sharing to be approximately \$2.61 per lineal foot or \$3,135 per 1200 feet of ditch average

length of ditch in Grayland area). This would be a **reduction of** approximately \$9.57 per foot and \$11,000 total reduction for a 1200 foot ditch.

2) Growers can bury their drains or build a culvert to protect the ditch.

- Survey results for approximate costs to install a culvert system also varied widely, from a low of \$1.00 per lineal foot to a high of \$8.00 per lineal foot. The total costs for this estimated in the 2005 WSU Cost Analysis was \$5.14 per lineal foot or \$6,168 total for 1200 feet of ditch. Cost sharing from USDA's NRCS program would reduce the economic impact to the growers installing a drain or culvert to \$3.10 per lineal foot or \$3,729 per 1200 feet of ditch. This would be a **reduction of** approximately \$2.00 per lineal foot or \$2,439 total for 1200 feet of ditch. This covers the cost of labor and materials.

3) Growers can use alternate pesticides other than those restricted in this rule and build no covers or culverts for their ditches.

- The costs of using alternate pesticides other than those restricted in this rule are unknown. Alternate products may have a higher cost up front as they are newer chemistries; they also may have to be used more often. However, the amount used would be much smaller (likely ounces per acre versus pounds per acre of older chemistries) so it may equal out.
- There are no fees for inspections or services;  
no additional recordkeeping,  
no additional required reporting, and  
no loss of sales revenue, so growers will have no increased costs related to recordkeeping, reporting, inspections or sales due to this rule.

## **JOBS CREATED OR LOST**

Under RCW 19.85.040, agencies must provide an estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rules. In collecting information from representative small businesses through the industry survey and focus group meetings the program estimates that **no jobs will be lost or created** a result of small businesses complying with the rules. Most of the industry has already cribbed and covered their ditches. Most growers do their own labor and very little acreage is still in need of cribbing and covering, less than 15%. In addition, growers can choose to use other chemicals instead of the restricted chlorpyrifos and diazinon in this rule. In which case, there is no cost to the grower related to jobs or labor.

## **DISPROPORTIONATE IMPACT TO SMALL BUSINESSES**

RCW 19.85.040 directs agencies to determine whether the proposed rule will have a disproportionate cost impact on small businesses by comparing the cost of compliance for small business with the cost of compliance for the ten percent of the largest businesses required to comply with the proposed rules.

The costs small businesses will incur to comply with the proposed rules **are not disproportionate** between small and large businesses. Costs will be comparable whether the business is small or large.

The costs will be proportional to the size of the business: the larger the field, the bigger the business, the larger the cost; the smaller the field, the smaller the business, the smaller the cost.

## **CONCLUSION**

To comply with chapter 19.85 RCW, the Regulatory Fairness Act, the WSDA's Pesticide Management Division has analyzed the economic impact of the proposed rules on small businesses and determined that although some costs to small businesses are evident, they have been minimized through the many meetings with industry in the area, NRCS Grant funding, the ability of growers to alternately use pesticides not restricted by this rule, and the very low percentage of growers that still need to finish cribbing and covering ditches voluntarily.

Please contact Robin Schoen-Nessa if you have any questions at (360) 902-2040 or email me at: [rschoen-nessa@agr.wa.gov](mailto:rschoen-nessa@agr.wa.gov).